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OFFICE OF PETITIONS

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| In re Application | : |
| Brian Wells | : |
| Application No. 09/916,212 | : DECISION ON APPLICATION |
| Filed: July 25, 2001 | : FOR PATENT TERM ADJUSTMENT |
| Attorney Docket No. 130109.429 | : |

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)...," filed August 24, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred eighty-five (285) days to three hundred twenty (320) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is three hundred twenty (320) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 3, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred eighty-five days. On August 24, 2004, applicants timely¹ submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred twenty (320) days. Applicants dispute the reduction of thirty-five (35) days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed September 4, 2001.

The Office initially determined a patent term adjustment of two hundred eighty-five (285) days based on an adjustment for PTO delay of three hundred seventy-seven (377) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) reduced

¹ PALM records indicate that the Issue Fee was received in the Office on August 24, 2004

by applicants' delays of fifty-seven (57) days and thirty-five (35) days, both pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of 377 days and the reduction of 57 days have been reviewed and found to be correct. The reduction of thirty-five (35) days of applicant delay is at issue.

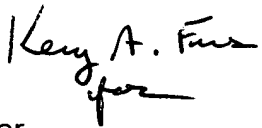
The reduction of 35 days has been found to be incorrect. A review of the application file reveals that, as stated by applicants, their response to the Notice to File Missing Parts of Application mailed September 4, 2001, is of record in the application with a date of receipt by the Office of November 2, 2001. Furthermore, the response included a complete reply to the Notice. Thus, the Office should not have entered the date that the instant application was complete as January 8, 2002 or assessed applicants a delay of thirty-five (35) days. The response was filed within the three-month period under 37 CFR 1.704(b) and accordingly, applicant's delay should have been assessed as zero (0) days. Applicants did not fail to engage in reasonable efforts to conclude prosecution of the application.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is three hundred twenty (320) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office will refer the matter to the Office of Patent Publication so that a patent can be issued.

Telephone inquiries specific to this matter should be directed to Patricia Faison-Ball, Senior Petitions Attorney, at (571) 272-3212.

A handwritten signature in black ink, appearing to read "Karin A. Ferriter", with a stylized flourish underneath.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen